

## **Freedom of Information Act 2000 (FOIA)**

### **Decision notice**

**Date:** 25 June 2015

**Public Authority:** Norwich City Council  
**Address:** City Hall  
St Peters Street  
Norwich  
NR2 1NH

#### **Decision (including any steps ordered)**

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1. The complainant requested information relating to benefit fraud allegations and investigations from Norwich City Council ("the council"). The council refused to provide the information, relying on the exemptions under section 40(2) and 41(1) of the Freedom of Information Act 2000 ("the FOIA"). These exemptions relate to personal data and information provided in confidence. The Commissioner's decision is that the council should have said that the majority of the requested information was not held. It correctly relied on the exemption under section 40(2) to withhold some of the information however other information was incorrectly withheld using section 40(2) and 41(1). The Commissioner found breaches of section 1(1)(a), 1(1)(b), 10(1) and 17(1) of the FOIA. There is a confidential annex associated with this decision.
2. The Commissioner requires the public authority to take the following steps to ensure compliance with the legislation.
  - Provide the information to the complainant in response to request (a) *"How many cases of apparent fraud reported concerning sheltered housing tenants with a 15 mile radius from City Hall?"*
3. The public authority must take these steps within 35 calendar days of the date of this decision notice. Failure to comply may result in the Commissioner making written certification of this fact to the High Court

pursuant to section 54 of the Act and may be dealt with as a contempt of court.

## **Request and response**

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4. On 15 May 2014, the complainant requested information from the council in the following terms:

*"a) How many cases of apparent<sup>1</sup> fraud reported concerning sheltered housing tenants with a 15 mile radius from City Hall?*

*b) How many cases of apparent fraud reported from Melbourne Cottages Union Street by tenants?*

*c) How many cases of apparent fraud reported about tenants living at Melbourne Cottages Union Street by council employees, past or present?*

*d) How many cases for item (a) were genuine? How many without foundation. Was action taken?*

*e) How many cases for item (b) were genuine? How many acted on without foundation. Was action taken?*

*f) How many cases for item (c) were genuine? How many instigated without sound reason or evidence".*

5. The complainant wrote to complain on 21 July 2014 when she did not receive a response within 20 working days.
6. The council responded on 7 August 2014. In relation to points a) and d), the council said it did not hold the information. In relation to the other points, the council said that it would not comment on the origin of fraud allegations.
7. The complainant wrote to complain about the response on 13 August 2014.
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<sup>1</sup> For clarity, the complainant told the Commissioner that she had meant "possible" when she used the word "apparent" in this context.

8. The council completed its internal review on 31 October 2014. It said that it had applied the exemptions under section 40(2) and 41(1) of the FOIA.

## **Scope of the case**

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9. The complainant contacted the Commissioner originally on 1 August 2014 to complain about the way her request for information had been handled. Following receipt of the council's internal review, the complainant contacted the Commissioner again on 12 November 2014. She asked the Commissioner to consider whether the council should have provided the information she requested. She also complained about the delay and the lack of a named person on the council's response as it was addressed generically from the FOI Team. For clarity, the latter issue is not a complaint that the Commissioner can address as it does not relate to responsibilities under the FOIA.
10. For the avoidance of doubt, the Commissioner clarified with the complainant during the investigation that her requests related only to benefit fraud.

## **Reasons for decision**

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### **Section 10 and 1(1)(a)**

11. In this case, the council initially claimed that the information requested in points a) and d) was not held. The Commissioner disagreed with this position. The council argued that the information was not held because the 15 mile radius of City Hall referred to in the request would cover five different local councils and one county council. It is clear however that the council could have dealt with the part of the requests that related to its area and it would have been appropriate to do so rather than to say that none of the information was held. The council subsequently accepted that information was held. The Commissioner considers that the council breached section 10(1) and 1(1)(a) of the FOIA by failing to confirm that some of the information was held within 20 working days or by the date of its internal review.
12. The council did not claim that the information requested at points (b), (c), (e) and (f) was not held however it became apparent to the Commissioner during his investigation that this was the case as the council did not hold any information that would reveal the identity of any individual who had made a fraud allegation falling within the scope of these requests. This is because fraud allegations can be made

anonymously via a fraud hotline. The information held falling within the scope of point (a) was reported in this manner and therefore it would not be possible for the council to respond to points (b) and (c) since anonymous callers cannot be identified as tenants or council employees. As the council cannot identify tenants or council employees, it cannot respond to the related questions in points (e) and (f) asking for further detail of particular cases relating to reports of fraud by tenants or council employees. As the council failed to state that this information was not held within 20 working days or by the date of its internal review, a further breach of section 10(1) and 1(1)(a) occurred.

### **Section 17(1)**

13. The council took longer than 20 working days to reply to the requests and subsequently relied upon exemptions that were not cited in its original response. The council breached section 17(1) of the FOIA for failing to rely on the exemptions claimed within 20 working days.

### **Section 40(2)**

14. For clarity, the Commissioner considered the application of the exemption under section 40(2) in relation to the information that was held by the council at points (a) and (d). It was necessary to consider some of the arguments in a separate confidential annex supplied only to the council.
15. The exemption under section 40(2) relates to third party personal data. Personal data is defined by the Data Protection Act 1998 ("the DPA") as any information relating to a living and identifiable individual. The first question for the Commissioner to consider is whether responding to the requests would involve the disclosure of personal data.
16. In this case, the council argued that responding to either request would reveal personal data because identification could take place. Individuals can be identified in a number of different ways. This includes direct identification, where someone is explicitly identifiable from a single source of information, such as a list of names, and indirect identification where two or more sources of information need to be combined for identification to take place. The council argued that identification would take place indirectly and that personal data could be disclosed. The rationale for that argument has been considered in the confidential annex.
17. The Commissioner considered that responding to request (a) would not involve the disclosure of any personal data and section 40(2) was therefore not engaged. However, the Commissioner agreed with the council that responding to request (d) would involve the disclosure of

personal data. The reasons for that are outlined in the confidential annex.

18. When a request involves personal data, the Commissioner's general approach to this exemption is to consider whether disclosure would breach the first data protection principle set out in Schedule 1 of the DPA. This provides that disclosure should be fair and lawful. Fairness is often the key consideration. When considering fairness, the Commissioner finds it useful to balance the reasonable expectations of the individual or individuals concerned and the potential consequences of the disclosure against the legitimate public interest in disclosing the information. It is helpful to consider whether the disclosure is necessary and whether the legitimate public interest could be met through more proportionate means.
19. When considering whether a disclosure of personal information is fair, it is important to take account of whether the disclosure would be within the reasonable expectations of the individual or individuals concerned. All the circumstances of the case are relevant when considering reasonable expectations and not simply what may have been said explicitly. The Commissioner notes that the information in question relates to fraud allegations and whether the council took any action. Given the sensitivities involved, it is reasonable to expect a high degree of confidentiality in relation to this type of information. There is nothing to suggest that there would have been any other expectation in this case.
20. It is also relevant to consider what the possible consequences of disclosing the personal data could be. It is important that fraud enquiries are made in a way that is proportionate and follows due process, without the risk of identification of specific cases before it may be appropriate to do so, such as during a court case. As acknowledged in the requests made, some allegations may not be progressed for a variety of different reasons. Inappropriate identification could cause reputational damage.
21. There is always some legitimate public interest in disclosure of information held by public authorities. This is because disclosure helps to encourage the general aims of achieving transparency and accountability. It also assists people in understanding the decisions made by public authorities, the actions taken and to be more involved in that process.
22. In this particular case, there is a public interest in accountability regarding fraud allegations and any action that may have been taken by the council. Transparency could help the public to assess the council's performance in this area, which involves activity to protect the use of

large amounts of public money. Transparency in this area could also act as a deterrent to those who may commit fraud in the future. However, in the circumstances of this case, the Commissioner is clear that the greater public interest lies in protecting the confidentiality of this process and those against whom allegations are made up until a point. Clearly, the situation will change if there is sufficient evidence and a prosecution is pursued against an individual.

23. It is the Commissioner's view that the council's performance in tackling fraud could be assessed to some extent through publicity about prosecutions in court, which would also act as a deterrent to other offenders. It is also likely that the disclosure of higher level, more general information concerning fraud activity would be a more proportionate way to address the legitimate public interest in this case without risking the inappropriate disclosure of personal data.
24. In view of the above, the Commissioner considers that the disclosure of the specific information requested by the complainant would not be warranted in the circumstances. The legitimate interest in protecting the confidence and privacy of those involved in fraud reports outweighs the legitimate public interest in disclosure in this case. As the Commissioner considers that the disclosure would be unfair, the exemption under section 40(2) was engaged.

### **Section 41(1)**

25. The Commissioner does not accept that section 40(2) was engaged in relation to request (a). The council also relied on the exemption under section 41(1). This exemption provides that information is exempt if it was obtained by the public authority from any other person and the disclosure would constitute an actionable breach of confidence.
26. The Commissioner does not consider that the exemption under section 41(1) is engaged. The information concerned is merely a figure relating to the total number of fraud reports concerning sheltered housing tenants, and it would not identify any individuals who may have made reports of fraud. The Commissioner does not therefore consider that the information has been obtained from another person in confidence since the request does not concern the details of any reports of fraud. The Commissioner's view is that the council's reliance on this exemption was therefore misconceived.

## **Other Matters**

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27. There is no specific time frame for completing internal reviews under the FOIA. However, the Code of Practice under section 45 states that complaints about requests should be dealt with promptly and the Commissioner recommends that conducting an internal review should not take longer than 20 working days in general. The council exceeded this time frame on this occasion. The Commissioner trusts that the council will make improvements to enable it to deal with requests for information more efficiently in the future.

## Right of appeal

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28. Either party has the right to appeal against this decision notice to the First-tier Tribunal (Information Rights). Information about the appeals process may be obtained from:

First-tier Tribunal (Information Rights)  
GRC & GRP Tribunals,  
PO Box 9300,  
LEICESTER,  
LE1 8DJ

Tel: 0300 1234504

Fax: 0870 739 5836

Email: [GRC@hmcts.gsi.gov.uk](mailto:GRC@hmcts.gsi.gov.uk)

Website: [www.justice.gov.uk/tribunals/general-regulatory-chamber](http://www.justice.gov.uk/tribunals/general-regulatory-chamber)

29. If you wish to appeal against a decision notice, you can obtain information on how to appeal along with the relevant forms from the Information Tribunal website.
30. Any Notice of Appeal should be served on the Tribunal within 28 (calendar) days of the date on which this decision notice is sent.

**Signed .....**

**Andrew White**  
**Group Manager**  
**Information Commissioner's Office**  
**Wycliffe House**  
**Water Lane**  
**Wilmslow**  
**Cheshire**  
**SK9 5AF**